

nothing but the prophylactic measures they again propose will stave off the impending competitive harm. However, we stated in D.02-09-050 and reaffirm here that just as we could not base the determination of Pacific's Section 271(c) on the resolution of every major telecommunications policy case before the Commission, we can not adjudge Section 709.2(c) on the basis of the policy demands of the competitors.

We do not lightly decline to pursue a number of the "further proceedings" that the parties vigorously propose. But we note that a number of the proposed proceedings are already before us. Others that the competitors have identified as imperative, such as switched access charge reform and special access performance incentives must be considered with full appreciation of the effects on the overall industry and the impacts on Commission resources. Certain parties highlight how these issues affect their economic well-being, but this Commission must consider and weigh how the issues affect all parties as well as California ratepayers.

Safeguards

Pacific contends that there is no need for the safeguards set forth in D.02-09-050; the other parties claim that the adopted protections are diluted and will be ineffective. The Joint Commenters declare that the Commission should immediately implement the structural separation of Pacific and the appointment of a neutral PIC administrator. They maintain that under the timeline directed by D.02-09-050 both safeguards will take too long to set up to be effective. We disagree. While the individual theories behind both structural separation and a neutral PIC administrator were articulated in the parties' proposals last year, no implementing details were presented. Some time must be devoted to fully fleshing out the costs and ramifications of what would be the first such

approaches adopted in the country. Our order requires that. To proceed hastily on either would ill serve the people of California.

Review of Joint Marketing Scripts

The parties continue to urge us to go back to the joint marketing proposals discussed in the draft of D.02-09-050. We remain unpersuaded that those proposals, if adopted, could withstand legal scrutiny. Instead, we believe that including the requirements of Tariff Rule 12 to the joint marketing of Pacific's long distance affiliate's services will properly balance the competitive concerns of the intrastate interexchange carriers with the convenience and informational needs of the ratepayer.

Pursuant to OP 19, the Telecommunications Division's staff (Staff) reviewed samples of Pacific's joint marketing scripts. Following a number of meetings that included Pacific as well as the Commission's Communications and Public Information Division, Staff advised the Assigned Commissioner and ALJ¹⁰ that it had recommended several changes to the sample joint marketing scripts, which Pacific had accepted. Staff also outlined some specific regulatory concerns.

During review of the scripts, Staff and Pacific discussed the problem both anticipated could occur if Pacific included the language set forth in OP 17¹¹ in its

¹⁰ By motion December 10, 2002, Pacific requested that the advisory document and its December 5 responsive letter be placed under a protective order in accordance with General Order (G.O.) 66-C because the materials contain extremely sensitive and proprietary internal marketing information. Pacific asks that the materials be disclosed only to Commission personnel subject to G.O. 66-C and parties in this proceeding who have signed a non-disclosure agreement. For good cause shown, we grant the motion and protect the documents for two years from the date requested.

¹¹ "Who would you like as your long distance carrier and local toll carrier."

scripts for new service connections. Pacific expressed concern that the language might migrate some new customers to SBC Long Distance for local toll when Pacific's service might best meet their needs. Staff indicated that the language might unnecessarily link a customer's decision to purchase long distance and local toll service. In actuality, a customer may select different carriers for these services, and Pacific must obtain separate third party verifications for each carrier decision. Given the problem the specific language of OP 17 unintentionally creates, we find that separating the one question into two provides the best solution. We shall modify OP 17 accordingly.

Staff noted that there could be significant revenue impacts in the future as a result of Pacific's open and clear intent to encourage its existing customers to switch their local toll business from Pacific to SBC Long Distance, whenever such customers call Pacific for any business reason. Staff states that the customer migration could cause a systematic erosion of Pacific's revenue base that could eventually push up local rates.

Staff also cautioned that the marketing of SBC Long Distance's bundled interLATA and intraLATA toll packages could have some customers purchasing toll services that might not be cost-effective for them. In response to these advisory comments, Pacific asserted that neither of the two was an appropriate issue for script review. We do not regard Staff as having overstepped its bounds by highlighting these additional comments. In fact, we expect to address these issues either in a later phase of the NRF case, R.01-09-001, or in another yet-to-be-identified future proceeding

Pac-West and Working Assets ask that competitors be allowed to monitor and review Pacific's joint marketing scripts. Marketing documents tend to be submitted to the Commission in tandem with requests for proprietary treatment.

We are not aware of any reason why competitors cannot inform Staff of script concerns so that Staff can review them from a comprehensive perspective. We think that Staff's review of the marketing scripts was beneficial for the Commission and competitors as well as Pacific. Going forward, we find that Staff's review of any substantial changes (i.e. new approach, major language changes or provision of new products) in the joint marketing scripts could help Pacific avoid potential confusion and conflicts with competitors and ratepayers. Therefore, Staff shall review any substantial changes made in the future to the sample scripts submitted pursuant to OP 19, until the Commission orders otherwise. Staff's continuing review of Pacific's joint marketing scripts should assist Pacific and us in discovering and eliminating the possibility of anticompetitive behavior that might be reflected in the scripts.

Expedited Dispute Resolution Process

Pursuant to OP 3 of D.02-09-050, the Assigned ALJ directed the parties to work together to develop an EDR Process that could be used to resolve operational disputes more quickly than under currently available procedures. On November 20, 2002¹², nine parties¹³ filed a proposed set of rules detailing procedures for a Commission-based arbitration process. (See Appendix A.) The process includes a procedure that sets out a schedule that is more compressed than the Commission's current schedule for Adjudicatory matters. It also

¹² The parties jointly submitted the original version of the proposed process on November 15, 2002. On December 3, 2002, Allegiance Telecom of California, Inc. (Allegiance) moved to be included as a submitting party to the joint proposal. The ALJ granted Allegiance's late-filed request.

¹³ Pacific, AT&T, Telscape Communications Inc., U.S. TelePacific Inc., Pac-West, The Greenlining Institute, ORA, TURN and WorldCom joined to submit the document.

proposes expedited as well as interim ruling schedules. We appreciate the time and effort that the parties have put into working together and agreeing upon this process. An approach addressing operational and interconnection disputes in a timely manner is crucial for these parties.

While the parties have made tremendous progress by agreeing upon and submitting this proposal, some brief period of time must be spent conforming the process and its rules to the Commission's Rules of Practice and Procedure. For example, certain terms appear in the proposed rules that do not appear in the Commission's rules. Accordingly, it is important that there not be ambiguities in the EDR process because of these differences in terminology. In addition, we must confirm that the Commission resources necessary to implement and support this process exist. We ask parties to include in their comments on this draft decision why they believe the existing expedited dispute process established in the Local Competition docket¹⁴ is inferior to the proposed process. Parties shall also advise if they would be willing to operate under a modification¹⁵ of the process that they submitted, for a twelve-month trial period. Using the EDR process proposal submitted as the focal point, we direct the Assigned ALJ, in conjunction with the parties, to conform and modify it so that the process can be implemented as quickly as possible.

¹⁴ In D.95-12-056.

¹⁵ After consultation with the parties

Special Access Performance Measures

Several CLECs¹⁶ commented that special access¹⁷ Operations Support System (OSS) services should be subject to the same performance incentive mechanisms as other OSS services in the Commission's performance incentives plan. The CLECs submitted a proposal to adopt special access OSS performance measures created by a national CLEC coalition.¹⁸ The coalition's document is attached as Appendix B. In addition to the performance measures, the CLECs propose that monetary performance-improvement incentives be generated by poor special access OSS performance. (WorldCom Comments, November 14, 2002 at 16; AT&T Comments, November 14, 2002 at 7 - 10; PacWest, et al., Comments, October 15, 2002 at 16.)

¹⁶ AT&T, PacWest, WorldCom, Working Assets, and XO. TR 1694-1697; Comments of AT&T Communications of California, Inc. (U-5002-C) in Response to the Administrative Law Judge's Request for Comment on Expedited Dispute Resolution and Competitive Safeguards, November 14, 2002; Comments of Pac-West Telecomm, Inc. (U 5266 C), Working Assets Long Distance (U 5233 C) and XO California, Inc. (U 5553 C) Opposing the Ruling Issued by Assigned Commissioner Brown, October 15, 2002; Comments of WorldCom, Inc. on Assigned Commissioner's Ruling on Concluding the California Public Utilities Code Section 709.2 Inquiry, October 15, 2002; Comments of WorldCom, Inc. November 14, 2002.

¹⁷ Special access services are defined as " a dedicated, non-switched, loop (circuit) connecting an end user with a CLEC's services or interexchange carrier's point of presence." FCC Notice of Proposed Rulemaking (NPRM), 01-339, Docket 01-321, In *the Matter of Performance Measures and Standards for Interstate Special Access Services*, released November 19, 2001, at 1.

¹⁸ Joint Competitive Industry Group Proposal, ILEC Performance Measurements & Standards in the Ordering, Provisioning, and Maintenance & Repair of Special Access Service, Version 1.1, issued January 18, 2002.

Pacific opposes any Commission special access oversight. (TR 1721.) It asserts that special access should not be regulated because it is adequately competitive. (*SBC Pacific Bell Telephone Company's (U 1001 C) Comments Regarding Issues Raised at November 6, 2002 Prehearing Conference*, at 23 - 24.) Pacific also asserts that any special access oversight should be addressed at the federal level. (*Id.* at 24 - 25.)

In late 2001, the FCC initiated a rulemaking to consider both measurement and enforcement issues for *interstate* special access services.¹⁹ In the initiating NPRM, the FCC stated, "To be sure, state commissions have jurisdiction over *intrastate* special access services" (emphasis added).²⁰ The states of Texas, New York, Pennsylvania, Minnesota, and Illinois, filed comments to the NPRM asserting the importance of state special access regulation.²¹ At this writing, the FCC has neither drafted a proposed rule nor resolved the issues presented in the NPRM.

¹⁹ NPRM 01-339.

²⁰ NPRM at ¶ 11.

²¹ *Comments of the Public Utility Commission of Texas*, NPRM CC Docket No. 01-321, et al., December 19, 2001; *Comments of the Minnesota Department of Commerce*, NPRM CC Docket No. 01-321, et al., January 8, 2002; *Reply Comments of the Pennsylvania Utility Commission in the Matter of Performance Measurements and Standards for Interstate Special Access Services, et al.*, CC Docket Nos. 02-321, et al., February 12, 2002; CC Docket No. 01-321/*Notice of Proposed Rulemaking for evaluating a select group of wholesale performance measures for special access. Initial Comments of the Illinois Commerce Commission*, January 9, 2002; *Comments of the New York State Department of Public Service In The Matter of Performance Measurements and Standards for Interstate Special Access Services, et al.*, CC Docket No. 01-321, et al., January 18, 2002.

The topic of special access services performance measurement has generated widely diverse opinions among the parties. At this point we have neither sufficient time nor information *to* definitively resolve these disputes. However, we will adopt a minimal, but most important safeguard. We will require that a special access services OSS performance database be created for the Commission and the parties to monitor. This information will become the critical building block for future decisions, such as whether such measurement is at all necessary, or on the other hand, whether special access services OSS performance should be integrated into the Commission's performance incentives plan as an incentive-generating service type.

To begin building this safeguard today, we initiate the adoption of any existing Pacific special access measures and any additional measures in the CLEC proposal for special access OSS performance measurement. Except for those measures currently operational, these measures will not go into effect until the parties have collaboratively reviewed them for any duplication and modified them to the conditions in California if necessary, or have made other mutually agreeable modifications. We will direct the parties to begin work on these measures immediately after their work is complete on the current Joint Partial Settlement Agreement (JPSA) review.

We expect that the parties should be able to accomplish this task in six months and will direct them to present a settlement or at least a partial settlement at that time. If no agreements have been reached, or if some issues remain unresolved, we direct the parties to submit written proposals for each unresolved issue, including supporting arguments and evidence. In the interim, we direct Pacific to report current special access OSS performance measurement

results in the same time and manner as current "diagnostic" results are reported.²²

We will not adopt an incentive mechanism for special access OSS performance today. At this point we will only require performance monitoring. We ask that the parties monitor Pacific's special access OSS performance through these measures and report to us any performance problems no later than six months after the new measures are adopted, and sooner if problems arise needing immediate Commission attention.

Conclusion

At the issuance of D.02-09-050, we did not consider our job with respect to Section 709.2(c) to be over. Our focus then and now is with the development of adequate competitive safeguards for the intrastate interLATA market. While acknowledging that D.02-09-050 was not appealed, most of the parties insist that we have further Section 709.2(c) proceedings and urge us to revisit issues that we have repeatedly declined to entertain. Notwithstanding the demands, we do not consider it appropriate to transplant the bulk of the major telecommunications policy matters to this proceeding. We believe that specific allegations should be pursued in a case dedicated to examining those allegations, not assembled with a vast assortment of past and recent accusations.

Anticompetitive conduct by Pacific that is substantiated will not be sanctioned. Any improper cross subsidization will be uncovered and remedied. Last December, Pacific chose to address Section 709.2(c) through its overall

²² By "diagnostic" we refer to performance measures that are not included in the performance incentive plan as credit-generating measures, such as PM nos. 8, 12, and 13.

demonstration of compliance with Section 271. We were not persuaded that that showing sufficiently enabled us to make the determinations required under our state law. We reject the notion that extensive discovery and exhaustive hearings are the only way to fulfill our obligations under Section 709.2(c)(2)-(4). We also decline to indefinitely delay Pacific's entry in the intrastate long distance market until all the disputed issues before us are resolved. We believe the better approach is to erect competitive protective measures so that illegal conduct is prevented, revealed and punished.

Continuing Staff's review of the joint marketing scripts when substantial changes are made will inform the Commission about any anticompetitive conduct that emerges in the scripts, and enable us to immediately address it. The EDR process, once promptly conformed to our rules, will be a significant competitive safeguard against any unfair conduct or operational disputes. Additionally, requiring Pacific to make existing special access performance measure results available to Staff as well the competitors will allow us to monitor the data and discuss the issues from a common source of information. With the assurance of these added safeguards, we find in accordance with Section 709.2(c)(2) that there is no anticompetitive behavior by the local exchange telephone corporation.

The current NRF proceeding, R.01-09-001, will determine in one of its phases whether or not Pacific has cross subsidized its operations. We need not replicate that case here. Federal and California law requires separate accounting records "to allocate costs for the provision of intrastate interexchange telecommunications service." As stated in D.02-09-050, we directed that an audit of SBC Long Distance take place once it is operating, pursuant to OP 8 in D.99-02-013. That audit shall include an examination of the methodology of

allocating intrastate interexchange telecommunications service costs. We affirm the satisfaction of these requirements under Section 709.2(c)(3), and find that there is no cross subsidization by Pacific.

The Staff review of the marketing scripts, the EDR process, and the availability of special access performance measure results together provide a significant safeguard against potential harm to the intrastate interexchange market. The competitors insist that delaying Pacific's entry into the intrastate long distance market until the Commission resolves various policy questions is an appropriate response to future harm to the market. We consider such an approach to be resource-intensive and unproductive. For our part, we expect these safeguards to mitigate projected damage. Thus, with the safeguards we adopt today and those set out in D.02-09-050, we find that possibility of harm to the competitive intrastate long distance market to be less than substantial. In accordance with Section 709.2(c)(4), we find that there is no substantial possibility of harm to the competitive intrastate interexchange telecommunications markets.

In making the remaining determinations under Section 709.2(c), we find that it is appropriate that Pacific shall have the authority to operate and provide intrastate interexchange telecommunications services provided that it has received full authorization from the FCC pursuant to Section 271 of the Telecommunications Act of 1996. Thus, we grant Pacific the authority to provide interexchange telecommunications services within state of California.

Comments on Draft Decision

The draft decision of ALJ Jacqueline A. Reed in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Commission's Rules of Practice and Procedure. Comments were filed on

The Commission finds that in light of scheduled action by the Federal Communications Commission in Washington, D.C. on December 19, 2002, to act on Pacific's application for interstate long distance service, pursuant to § 271 of the Telecommunications Act of 1996 (47 U.S.C. § 271), it is necessary for this Commission to take action by the effective date of Pacific's long distance service granted by the FCC's action, in order to provide guidance to Commission staff as to what to do with the California tariff filings permitted by the FCC's action. In order to allow the Commission to consider the matter in an expedited manner, the comment period is shortened and comments are due at noon, on December 24th.

The public necessity of deciding California's concurrent jurisdiction pursuant to Public Utilities Code § 709.2 over intrastate InterLATA long distance service in a manner that addresses issues of sovereignty and comity contemporaneous with Pacific's service offering permitted by the FCC's action, outweighs the public interest in having the full 30-day period for review and comment on the proposed decision. The Commission further finds that the normal public interest in a 30-day comment period is here somewhat diminished by the fact that a significant proportion of the disputed factual issues are coextensive with those previously decided in D.02-09-050, and have been addressed and commented upon by parties.

Assignment of Proceeding

Geoffrey Brown is the Assigned Commissioner and Jacqueline A. Reed is the Assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. On September 19, 2002, this Commission issued D.02-09-050, its advisory opinion to the FCC on Pacific's compliance with the fourteen checklist items of Section 271.

2. On October 4, 2002, the Assigned Commissioner issued an ACR noting that although the Commission had favorably assessed Pacific's long distance application for the FCC, the status of Pacific's intrastate interexchange request was hampered by the Commission having affirmatively made only one of the four determinations required under Section 709.2(c).

3. The ACR stated that upon reviewing the proceeding record after the issuance of the decision, the Assigned Commissioner believed that the outstanding Section 709.2(c) issues could and should be resolved promptly.

4. The Assigned Commissioner questioned how beneficial further proceedings and additional rounds of briefings would be in addressing the unfinished aspects of the Section 709.2(c) inquiry.

5. In his view, the remainder of the proceeding should focus on strengthening the safeguards established in D.02-09-050, and establishing additional safeguards, if warranted, to mitigate the potential harms to the intrastate interexchange market.

6. The November 6, 2002 PHC was convened to: (1) to advise the interested parties that the Commission wanted to resolve the remaining Section 709.2(c) issues as promptly as possible; (2) to urge the parties to collaborate on an Expedited Dispute Resolution (EDR) process in order to address the ongoing

operational conflicts between Pacific and the competitors; (3) to ask Pacific to work as closely as possible with staff to keep it fully briefed and ready for any and all post authorization regulatory tasks; and (4) to allow the parties an opportunity to further express their views and concerns on the resolution of the Section 709.2(c) open issues.

7. Most parties oppose the ACR's proposal, and urge the Commission to hold further proceedings.

8. A number of parties comment that the existing safeguards established under D.02-09-050 should be strengthened and implemented immediately, and new safeguards added.

9. No party appealed D.02-09-050.

10. Restarting the Section 709.2(c) inquiry from the beginning ultimately will not be productive.

11. The Assigned Commissioner remarked at the September 19 Commission Conference that appropriate safeguards could best mitigate existing anticompetitive conduct and cross subsidization as well as significant future harms to competitors.

12. The public interest is better served by resolving the competitors' disputes with Pacific than by simply cataloguing them.

13. A number of the proceedings that parties propose be considered in Section 709.2 are already before us.

14. Other proceedings identified as imperative, such as switched access charge reform and special access performance incentives, must be considered with full appreciation of the overall industry and the impacts on Commission resources.

15. While the individual theories behind both structural separation and a neutral PIC administrator were articulated in the parties' proposals last year, no implementing details were presented.

16. The language set forth in OP 17 of D.02-09-050 unnecessarily links a customer's decision to purchase long distance and local toll service.

17. Marketing documents tend to be submitted to the Commission in tandem with requests for proprietary treatment.

18. Competitors can inform Staff of script concerns so that Staff can review the joint marketing scripts from a comprehensive perspective.

19. Staff's review of the marketing scripts has been beneficial for the Commission as well as Pacific.

20. The EDR process submitted by the parties includes a procedure that sets out a more compressed schedule than the Commission's current schedule for adjudicatory matters, and it proposes expedited as well as interim ruling schedules.

21. While the parties have made tremendous progress by agreeing upon and submitting the EDR proposal, some brief period of time needs to be spent conforming the process and its rules to the Commission's Rules of Practice and Procedure.

22. The CLECs state there is a need for special access services OSS performance measurement and incentives.

23. Pacific responds that there is no need for special access services OSS performance measurement and incentives.

24. The CLEC - Pacific Bell dispute over the need for special access services OSS performance measurement can be more easily resolved with objective performance results from special access services OSS services.

25. Continuing Staff's review of the joint marketing scripts when substantial changes are made will inform the Commission about any anticompetitive conduct that emerges in the scripts, and enable us to immediately address it.

26. The EDR process, once promptly conformed to Commission rules, will be a significant competitive safeguard against any unfair conduct or operational disputes.

27. Requiring Pacific to make existing special access performance measure results available to Staff as well as the competitors will allow us to monitor the data and discuss the issues from a common source of information.

28. At the issuance of D.02-09-050, the Commission did not consider its job with respect to Section 709.2(c) to be over.

29. The Commission's focus then and now is with the development of adequate competitive safeguards for the intrastate interLATA market.

30. While acknowledging that D.02-09-050 was not appealed, most of the parties insist that the Commission entertain further Section 709.2(c) proceedings and urge it to revisit issues that it has repeatedly declined to entertain.

31. We reject the notion that extensive discovery and exhaustive hearings are the only way to fulfill our obligations under Section 709.2(c)(2)-(4).

32. We also decline to indefinitely delay Pacific's entry in the intrastate long distance market until all the disputed issues before us are resolved.

33. We believe the better approach is to erect competitive protective measures so that illegal conduct is prevented, revealed and punished.

34. Continuing Staff's review of the joint marketing scripts when substantial changes are made will inform the Commission about any anticompetitive conduct that emerges in the scripts, and enable us to immediately address it.

35. The EDR process, once promptly conformed to our rules, will be a significant competitive safeguard against any unfair conduct or operational disputes.

36. Additionally, requiring Pacific to make existing special access performance measure results available to Staff as well as the competitors will allow us to monitor the data and discuss the issues from a common source of information.

37. The current NRF proceeding, R.01-09-001, will determine in one of its phases whether or not Pacific has cross-subsidized its operations; we need not replicate that case here.

38. We affirm the satisfaction of these requirements under Section 709.2(c)(3), and find that there is no cross subsidization by Pacific.

39. The Staff review of the marketing scripts, the EDR process, and the availability of special access performance measure results together provide a significant safeguard against potential harm to the intrastate interexchange market.

40. With the safeguards we adopt today and those set out in D.02-09-050, we find the possibility of harm to the competitive intrastate long distance market to be less than substantial.

Conclusions of Law

1. Since Pacific neither appealed the D.02-09-050 determination that the record did not support an affirmative Section 709.2(c)(2) finding nor sought leave to address unanswered accusations, we are not persuaded that compelling evidentiary hearings on these ongoing and increasing allegations would benefit the public interest more than finding a method of resolving Pacific-competitor disputes quickly and more efficiently.

2. The Commission could not base the determination of Pacific's Section 271(c) on the resolution of every major telecommunications policy case before it, and cannot adjudge Section 709.2(c) on the basis of the policy demands of the competitors.

3. While certain parties highlight how various major telecommunications policy issues affect their economic well-being, this Commission must consider and weigh how the issues affect all parties as well as California ratepayers.

4. Some time must be devoted to fully fleshing out the costs and ramifications of structural separation and selection of a neutral PIC administrator; to proceed hastily on either would ill serve the people of California.

5. Including the requirements of Tariff Rule 12 into the joint marketing of Pacific's long distance affiliate's services should properly balance the competitive concerns of the intrastate interexchange carriers with the convenience and informational needs of the ratepayer.

6. Given the problem the specific language of OP 17 unintentionally creates, separating the one question into two questions provides the best solution.

7. Staff's review of any substantial changes in the joint marketing scripts, such as new approaches, major language changes or the offering of new products, could help Pacific avoid potential confusion and conflicts with competitors and ratepayers.

8. Staff's continuing review of Pacific's joint marketing scripts should assist Pacific and the Commission in discovering and eliminating the possibility of anticompetitive behavior that might be reflected in the scripts.

9. An approach that addresses operational and interconnection disputes in a timely manner is crucial for the parties in this proceeding.

10. It is important that there not be ambiguities in the EDR process due to differences in terminology.

11. The California Public Utilities Commission has jurisdiction over intrastate special access services.

12. The Commission should examine objective performance results from special access services OSS service before deciding to permanently incorporate special access performance measures and/or incentives into the Commission's performance incentives plan.

13. Pacific should report existing operational special access OSS performance measurement results and work with the parties in crafting a more complete set of measures.

14. Transplanting the bulk of the major telecommunications policy matters to this proceeding would be inappropriate.

15. Specific allegations should be pursued in a case dedicated to examining those allegations, not assembled with a vast assortment of past and recent accusations.

16. Anticompetitive conduct by Pacific that is substantiated will be sanctioned.

17. Any improper cross subsidization will be uncovered and remedied.

18. Extensive discovery and exhaustive hearings are not the only way to fulfill our obligations under Sections 709.2(c)(2)-(4).

19. Instead of indefinite delay, the better approach is to erect competitive protective measures *so* that illegal conduct is prevented, revealed and punished.

20. With the assurance of the added safeguards, there is no anticompetitive behavior, pursuant to Section 709.2(c)(2), by the local exchange telephone corporation.

21. Federal and California law requires separate accounting records “to allocate costs for the provision of intrastate interexchange telecommunications service.”

22. The existence of separate accounting records and the mandated audit testing costing allocation methodology satisfy the requirements of Section 709.2 (c)(3); thus, there is no cross subsidization.

23. The Staff review of the marketing scripts, the EDR process, and the availability of special access performance measure results together should provide a significant safeguard against potential harm to the intrastate interexchange market.

24. With the adopted safeguards, there should not be a substantial possibility of harm to the competitive intrastate interexchange telecommunications markets; thereby enabling the Commission to so determine under Section 709.2 (c)(4).

25. It is appropriate for Pacific to have the authority to operate and provide interexchange telecommunications services intrastate provided that it has received full authorization from the FCC pursuant to Section 271 of the Telecommunications Act of 1996.

26. The Commission should grant Pacific the authority to provide interexchange telecommunications services within the state of California immediately for public convenience.

O R D E R

IT IS ORDERED that:

1. Pacific Bell’s (Pacific) motion, pursuant to General Order (G.O.) 66-C, for a protective order covering documents regarding the California Public Utilities Commission’s (Commission) Telecommunications Division Staff’s (Staff) review

of joint marketing scripts in accordance with Ordering Paragraph (OP) 16 of Decision (D.) 02-09-050 is granted. The documents shall be made available to Commission personnel subject to G.O. 66-C and all other parties to this proceeding who have signed a non-disclosure agreement, for no more than two years from the date of this order.

2. OP 17 of D.02-09-050 shall be modified to read:

Pacific Bell (Pacific) shall state consumer's equal access right to a long distance carrier of ~~their~~ his/her choice prior to identifying its long-distance services and offer the customer the opportunity to select the carrier of ~~their~~ his/her choice. Pacific shall include in its customer service scripts for a new service connections the following: "You have many companies to choose from to provide your long distance and local toll service including (Pacific Bell Long Distance). If you like, I can read from a list of available carriers and provide their telephone numbers. Who would you like as your long distance carrier? and Who would you like as your local carrier?"

3. Staff shall review any substantial changes that Pacific makes in the future to the sample joint marketing scripts submitted pursuant to OP 19, until such time as the Commission orders otherwise.

4. Staff shall advise the Assigned Commissioner and Administrative Law Judge (ALJ) of its findings and recommendation, if Staff has concerns or discovers problems.

5. Using the Expedited Dispute Resolution (EDR) proposal submitted in this proceeding as the focal point, the Assigned ALJ shall conform and modify it, in conjunction with the parties, so that the EDR process can be implemented as quickly as possible.

6. Beginning with performance for the month of July 2002, Pacific shall report currently internally available performance measurement results for special access OSS services. These results shall be reported in the same time and manner as existing Joint Partial Settlement Agreement "diagnostic" Operational Support System (OSS) performance results.

7. Beginning no later than March 1, 2003, in the Rulemaking 97-10-016/ Investigation 97-10-017 performance measurement proceeding, parties shall review existing Pacific measures and any additional measures in the competitive local exchange carrier competitive local exchange carriers special access OSS performance measures proposal, and shall collaborate to produce a complete set of OSS performance measures for special access service types by modifying, amending, or integrating that proposal where appropriate.

8. No later than six months after the special access performance measurement collaboration has begun, parties shall submit to the Commission an agreement or partial agreement covering all the issues to which parties have agreed.

9. No later than six months after the special access performance measurement collaboration has begun, for any issue not resolved in the collaborations, parties shall submit any proposals to the Commission along with the justification for those proposals.

10. If no issues are resolved, no later than six months after the special access performance measurement collaboration has begun, parties shall submit their complete proposals to establish performance measures and shall include their justification for those proposals.

11. Pacific shall have the authority to operate and provide interexchange telecommunications services intrastate provided that it has received full authorization from the FCC pursuant to Section 271 of the Telecommunications Act of 1996.

12. The Section 709.2 safeguards shall remain in effect until they are discontinued on further order of the Commission, based on a motion by Pacific demonstrating that the safeguards are no longer necessary or appropriate, or that the burden of compliance is outweighed by the potential benefits.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A

FORMAL AND EXPEDITED DISPUTE RESOLUTION